IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 9285 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

---

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KJ RATHOD

VERSUS

THE STATE OF GUJARAT

Appearance:

MR KM SHETH for the Petitioner

MR MA BUKHARI for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : /09/2000

C A V JUDGMENT

#. The application filed by the petitioner for the

renewal of his mining lease of Black Trap Quarry survey No.134 of Rajkot was came to be rejected by the Mining authority Collector, Rajkot which order was confirmed in the appeal and revision and those orders gave cause to him to file this petition and the prayer has been made for quashing and setting aside of all the three orders.

#. The learned counsel for the parties are in agreement that this mining lease was not renewed in favour of the petitioner by the authority on four reasons and grounds. The same are as under :-

(a) Originally lease has been granted for 10 years which has been renewed twice for total period of 10 years and this is what the maximum period for which the lease could have been renewed.

(b) Amargadh (Bhichri) Gram Panchayat had represented vide letter dated 5.9.89 and 19.9.1989 that the working in the lease area with blasting is danger to the public safety as it is very near to public park, road and religious place.

(c) The Rajkot Municipal Corporation vide Letter No.R.M.C./Survey/Gan/460 dated 17.7.1991 had also requested not to renew the quarry lease of the petitioner to ensure public safety.

(d) The petitioner had continued the working after expiry of the lease period against the provisions of Gujarat Minor Mineral Rules, 1966".

#. The back drop of the facts of the case are that initially the lease has been granted for 10 years by the Collector, Rajkot under the order dated 5.2.1971 in the name of New Bharat Stone and Metal Supply Co. It is not in dispute that with the sanction of the Collector, Rajkot this lease was transferred in the name of the father of the petitioner, who has expired. A lease agreement was executed for a period of 10 years by the original grantee on 9.7.1971. On 8.5.81 an application was came to be made by the original grantee for renewal of the lease and same was granted for 5 years and the agreement was executed on 4.9.81 effective from 9.7.81. On 9.7.86 an agreement has been executed for second renewal, which has been granted for 5 years. The late

father of the petitioner on 11.3.91 made an application before the Collector, Rajkot for the renewal of the mining lease. It is not in dispute that the lease period came to an end on 8.7.1991. The Collector, Rajkot under its order dated 4.10.91 rejected the application of the petitioner for the renewal of the lease on the grounds inter alia that under the provisions of the Rule 18(1)(b) of the Gujarat Minor, Mineral Rules, 1966 (hereinafter referred to as the Rules) no further renewal can be granted as the lease is already granted for 20 years. This order has been taken by the petitioner in appeal before the appellate authority i.e. Additional Director Geology, Science and Mineral Department, Gandhinagar. The order was stayed. Ultimately, the appeal was came to be rejected under the order dated 6.3.92 by the appellate authority. The petitioner has taken the matter in revision application and during the pendency of revision application it is not in dispute that the interim relief has been granted in favour of the petitioner. This revision application was came to be rejected on 22.8.98. Hence this Special Civil Application.

#. This Special Civil Application was presented in the court by the petitioner on 5.11.98. It has been placed in the court for preliminary hearing on 6.11.98. On that date the notice was issued to the respondents. However, interim relief was not granted. After notice the matter was admitted on 19.8.1999 but the interim relief has not been granted in favour of the petitioner. The learned counsel for the petitioner admits that in these proceedings the interim relief has not been granted by this court in favour of the petitioner.

#. The learned counsel for the petitioner contended that rule 18 of the rules have altogether been misread and misunderstood by the authorities. This rule makes a clear provision and empowers the Collector, Rajkot to renew the lease for 20 years. In this case the petitioner's lease has been renewed only for 10 years and as such it could have been renewed for 10 years more. Regarding second ground given for non-renewal of the lease, the learned counsel for the petitioner submits that at one point of time the Gram Panchayat was against the grant of the renewal of the lease but in later point of time it has given no objection certificate and reference in this respect is made to the document at Annexure-D at page No.40. Regarding third ground given for rejection of application of renewal of lease the learned counsel for the petitioner submitted that the Corporation has also given its no objection and reference has been made to the document at page No.42. The last

ground given for the rejection of the application of the petitioner for renewal of the mining lease the learned counsel for the petitioner urged that pending the renewal application the petitioner continued to operate the mining lease. In his submission when the application is to be submitted for renewal of the mining lease well in advance it is the duty of the respondent, Collector, Rajkot to pass appropriate order thereon within that time. In this case, the Collector, Rajkot has not passed the order on the application of the petitioner within the time. It has taken a long time to dispose of that application. It cannot be permitted to take the benefit of its own wrong. However, the learned counsel for the petitioner admitted that after expiry of the period of lease period the petitioner continued to operate the mining lease.

#. Mr.M.A.Bukhari, learned AGP supports the orders passed by the authorities below.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. On being put by the court the learned counsel for the petitioner is unable to show whether after the decision of the State Government in the revision application the petitioner stopped the mining operation or not. The learned counsel for the petitioner however does not dispute that during the period from the date of dismissal of the revision application and the date of the filing of the Special Civil Application the petitioner has continued with the mining operation. In the Special Civil Application the petitioner has nowhere stated that after decision of the revisional authority he has stopped to operate the mining lease. From the prayers made by the petitioner in the Special Civil Application it is clear that the petitioner is continuing the mining operation. The petitioner has no right whatsoever to carry on the mining operations even for a day beyond the date of the expiry of the renewed lease period. This renewed lease expired on 8.7.91. It is true that the petitioner had submitted the application in the month of March, 1991 and the Collector, Rajkot is expected to decide this application before the date of the expiry of the renewal the lease. It is unfortunate that these authorities are not mindful of the provisions of law as well as the difficulties and loss which may cause because of the inaction and omission to the citizen. This renewal application has been decided by him on 4.10.1991 i.e. after about 7 months of the filing of the application and 3 months of the date of the expiry of the

renewed lease. The application for renewal as per the rules is to be submitted before 3 months of the date of the expiry of the lease. This limit is prescribed with some object and purpose by the rules making authority. It is very obvious that the authority may have a reasonable time to consider and take a final decision on the application. So that where it is granted the application there may not be any break in the mining operation. Similarly where it is rejected the holder of the lease may approach to the higher authorities by way of appeal or revision so as to have a sufficient time to get the stay order and thereby the operation of mining lease may not be in any way affected. It is a fact that these officers are not taking care or bother for the provisions of the law. They have no control, management and care over these matters in the office of the District Collector concerned. If these powers are conferred upon the District Collectors and if they are having multi facet jurisdiction as well as a busy administrative schedule still they have to take all the care to see that the applications for renewal of mining lease is being decided well within the time so that either way the litigant may not suffer. This inaction and omission on the part of the Collector, Rajkot not to take care of the application and decided it within the time this petitioner has been put in many difficulties. One of the grounds given which reflects from the reply filed by the respondents for the rejection of the application of the petitioner for renewal of lease is that after expiry of the renewed lease period he continued to operate lease. I find some substance and justification of the petitioner that the authority i.e. particularly the Collector, Rajkot cannot be permitted to take the benefit of his own wrong, omission and inaction. The authority, who itself has not decided application of the petitioner well in time and made an inordinate delay to decide the same cannot be permitted to take benefit of its own wrong, inaction or omission. If this officer is so strict in his approach, equally he should have been careful, vigilant and prompt to decide the application of the petitioner within the time limit so that this situation would not have been created. It is unfortunate that the District Collector has not taken care of the provisions of the rules and for his inaction and omission the petitioner has to suffer. Be that as it may. But this court will not permit the petitioner to act as a violator of law. Law of the land has to be respected by the citizens. A violator of the law cannot be granted any relief by this court under its extraordinary, equitable jurisdiction. It is true that the Collector, Rajkot has not taken decision on the application of the petitioner

within 3 months of the filing thereof. But the delay in the decision on the application of the petitioner by the authority does not justify the action of the petitioner to continue with the mining operation. If his application is not decided the petitioner has to stop the mining operation forthwith from the date on which the lease period expires. He has to surrender the lease to the concerned authority and only where his application is allowed or where it is rejected and in the appeal stay is granted it has to be restored back to him and then he could have continued with the mining operation. From the facts, which have been given by the petitioner in the list of events I find that the Collector, Rajkot decide the application on 4.10.91 and in appeal the stay has been granted on 1.11.91. So, there is also a time gap of about 27 days after the rejection of the application of the petitioner for renewal of mining lease and grant of stay, I fail to see any justification with the petitioner to continue the mining operation during this period. This is another period during which the petitioner is illegally excavated the minerals from the area. On 6.3.92 the appeal was rejected by the appellate authority. In revision, stay has been granted in his favour on 6.4.92. So, for about one month the petitioner has continued to operate this mining lease unauthorisedly. The worst part is that the petitioner even after rejection of the revision application on 22.8.98 has continued mining operations. The writ petition, as stated earlier filed on 5.11.98 and this court has not granted stay in his favour. It is not the case of the petitioner that he has stopped the mining operations immediately after dismissal of the revision application. In view of these facts it is clear that from the date of expiry of lease to the date of the rejection of renewal application, during the period from the date of rejection of the renewal application and date of grant of the stay by the appellate authority, during the period from the date of rejection of the appeal and grant of the interim relief by the revisional authority, during the period from rejection of the revision application and the date of filing of writ petition and till day the mining operations are being carried out in the area which is wholly unauthorised. The petitioner is not a law abiding citizen, he is a violator of law and only on this ground this writ petition deserves to be dismissed

#. The learned counsel for the petitioner has failed to furnish any justification whatsoever for carrying on the mining operations by the petitioner in all eventualities after dismissal of the revision application by the State

Government. This court though deprecates the approach of the Collector, Rajkot not to decide this renewal application of the petitioner before the expiry of the lease period but only on the basis of inaction and omission of the said officer the petitioner cannot be given any benefit. The collector may not be oblivious of his duties which he owes to the citizens or he may be negligent and careless but the petitioners being the citizens of the country he has to present himself as a law-abiding citizen. The law of the land has to be respected and given effect to. Only the law abiding citizen and not the violator of law can be protected by this court under its extraordinary equitable jurisdiction.

##. The role of Amargadh (Bhichri) Gram Panchayat in this case also appears to be very suspicious and doubtful. In the year 1989 the Gram Panchayat has informed to the Collector, Rajkot and objected against the working of this lease as blasting, in the opinion of the gram Panchayat is dangerous to the public safety. The lease is stated to be near to the public park, road and religious place. The gram Panchayat at later point of time has given its no objection for grant of renewal of the lease in favour of the petitioner and the reference in this respect may have to its letter dated 20.9.1991. I fail to see if operation of this mining lease was taken to be danger to the public safety as it is being near to public park, road and religious place how that danger has gone in the year 1991. In these facts of this case two inferences necessarily follow; (i) the objection of the gram Panchayat may not be true, genuine and fair. It may be a motivated and based on extraneous consideration; or (ii) the petitioner has managed to obtain no objection certificate from the gram Panchayat. This management of the no objection certificate, if what it is said by the gram Panchayat earlier is true, genuine and correct then the gram Panchayat also equally blamed worthy. This no objection possibly would have been given on some extraneous consideration. This is a matter of serious concern. However as this lease is not renewed it is not necessary to give any direction to the authority concerned to enquire into the matter and find out whether this lease is danger to the public safety as being near to public park, road and religious place or not.

#. So far as the Rajkot Municipal Corporation is concerned the learned counsel for the petitioner has failed to show any document where it has given its no objection for this renewal of the mining lease. The

reference made to the document Annexure-E at page 42 by the learned counsel for the petitioner is wholly misplaced. This is dated 3.6.1986 and the reference in the ground is made to the letter of the Corporation of the year 1991.

##. From the facts aforesaid it is also a matter of serious concern that despite of objections by the Corporation and the Municipality how the Collector has granted renewal of the lease earlier. If we go by the facts of this case the second renewal has been made in the year 1986. At that time the letter of the Rajkot Municipal Corporation was there. Be that as it may. After receipt of these letters from the Gram Panchayat and the Municipal Corporation of Rajkot if it is a matter of dangerous to the public safety the Collector should have taken the appropriate steps and where he satisfied that what these 2 constitutional authority objected is correct it has ample power to cancel the lease. However, despite of these 2 letters no action has been taken by the Collector, which goes to show that in the office of the Collector, Rajkot also the petitioner would have managed the things in his favour.

##. I find sufficient merits in the contention of the learned counsel for the petitioner that Rule 18 of the rules is totally misconstrued, misunderstood and misplaced. Rule 18(1)(b) of the Rules reads as under :-

Section 18(1)(b) :-

> The lease for all minerals specified in sub-clause (i) of clause (a) may be renewed by the competent officer for one or more periods and the period of renewal at one time shall not exceed ten years and the total period for which the lease may be renewed shall not exceed twenty years in the aggregate.

From reading of this Rule 18 of the Rules, 1966 the period for which a quarry lease may be granted shall not exceed 10 years of minor minerals. Exception has been carved out in the cases of quarry lease for ordinary sand, kankar, murram and gravel. Sub-Rule (1)(b) provides that the renewal of the quarry lease is permissible at one time for a period not exceeding 10 years and a total period for which the lease may be renewed shall not exceed 20 years in aggregate. So, the scheme of the rule is that original lease can be granted for 10 years and it can be renewed from time to time but

at one time the lease cannot be renewed for the period exceeding 10 years and a total period for which the lease may be renewed shall not exceed 20 years in aggregate. So, the leasing period for which the lease is renewable is two ways; it cannot exceed for a period of 10 years at one time and the total aggregate period of renewal shall not exceed 20 years. It is not the case of the respondent that in aggregate the renewal of lease of the petitioner has been made for the period exceeding 20 years. So, this ground given for the rejection of the application of the petitioner for renewal of the quarry lease is not tenable. However, on other grounds renewal of the mining lease of the petitioner could have been made and accordingly even if this point is decided in favour of the petitioner no relief can be granted to him.

In the result, the Special Civil Application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.500/= as costs of this petition to the respondents-State.

(S.K.Keshote, J.)

*Pvv